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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): E. HEBERT *et al.*

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Examiner: E. Lee

Application No.: 09/274,015

Group Art Unit: 1732

For: MULTILAYER GOLF BALL WITH A THIN
THERMOSET OUTER LAYER

DECLARATION OF HERBERT C. BOEHM UNDER 37 CFR § 1.132

Commissioner for Patents
Washington, D.C. 20231

Sir:

I, Herbert C. Boehm, hereby declare the following:

1. Since January 1, 1988, I have been employed by ACUSHNET COMPANY (formerly doing business as Titleist and Foot-joy Worldwide), 333 Bridge Street, Fairhaven, MA 02719, the Assignee of record of the entire, right, title and interest in the invention.
2. I presently hold the position of Executive Vice President and General Manager of Golf Ball Operations.
3. This declaration is filed to provide evidence to traverse the rejections made in the December 19, 2001 Office Action.
4. In particular, the evidence provided in this declaration shows the commercial success of the Pro V1™ golf ball (a.k.a. "the Pro V1 star" and "Titleist Star" as seen in Exhibit A).
5. The method in which the Pro V1 star golf ball is manufactured is commensurate in scope with the currently pending independent claims. Specifically, the golf ball has a dual core, multilayer cover construction. The core is made of a solid center of a first rubber material, and a solid core outer layer of a second rubber material. The two rubber materials have different physical properties. For example, the solid core outer layer of the Pro V1 star has a higher hardness than its solid center. The Pro V1 star has an inner cover layer with a shore D hardness of about 65, and a cast outer cover layer with a lower hardness. The outer diameter of the inner cover layer is greater than 1.6 inches. Thus, the Pro V1 star is made in accordance with all of the steps recited in each of the independent claims.
6. Acushnet Company provides golf equipment to a great number of professional golfers participating in PGA Tour events. These top-level players are free to choose any type of Titleist golf ball in any tournament in which they play. Thus, a player may play a Pro V1 star in one

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tournament, a Pro V1 in the next, and return to a Pro V1 star (or play yet another Titleist ball) in the following event.

7. Acushnet Company does not try to influence a player's golf ball selection to serve marketing, advertising, or other promotional purposes, nor would a PGA Tour player allow his equipment selection to be subjected to such influence. Because proper equipment can be critical to their game, PGA Tour players choose golf balls based on objective principles, such as measured ball performance matched to the player's swing characteristics.

8. At the beginning of each PGA Tour event, an official survey of each player's equipment selections (shoes, clubs, golf ball, etc.) is recorded and reported. These equipment surveys are conducted at all PGA Tournaments.

9. Attached hereto as Exhibit A is a chart summarizing ball selection by golfers participating in PGA Tour events as early as September 2001. For instance, 23 participants in the Pennsylvania Classic on September 23, 2001 chose the Pro V1 star. In January 2002, 14 participants chose the Pro V1 star in the Bob Hope Chrysler Classic. In addition to identifying how many players played a particular ball in each event, the chart also provides an overall total for each year and a percentage of the how often a ball was selected.

10. When introduced last year, the Pro V1 star was an immediate success, and its success has been sustained over an extended period. In nearly every PGA Tour event, the Pro V1 star has been among the most popular golf balls. Furthermore, a significant number of players have chosen the Pro V1 star over the enormously successful Pro V1.

11. This sustained popularity with professional golfers, who carefully study the available technology and demand the most from their golf equipment, clearly shows that the Pro V1 star achieved its success because of its improved performance and technical advances.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully Submitted,



Herbert C. Boehm

Date: May 17, 2002